

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.5

NORTHWESTERN HAWAIIAN ISLANDS MARINE REFUGE

- §13-60.5-1 Intent and purpose
- §13-60.5-2 Boundaries
- §13-60.5-3 Definitions
- §13-60.5-4 Prohibited activities
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§13-60.5-1 Intent and purpose. The department intends:

- (1) To establish a marine refuge in the Northwestern Hawaiian Islands for the long-term conservation and protection of the unique coral reef ecosystems and the related marine resources and species, to ensure their sustainable use for present and future generations;
- (2) To manage, preserve, protect, and conserve the unique resources in the marine refuge, using the best available science and a precautionary management approach to resource protection to minimize risks of possible adverse effects on the regional ecosystem or its indigenous wildlife in this area, especially where data is limited;
- (3) To implement an entry permit program for the

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area that will cause no harm to the refuge resources and be consistent with the management programs in the adjacent National Wildlife Refuge and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve for this area, that preserves the area by limiting entries and restricting access to specific areas;

- (4) To support, promote, and coordinate appropriate scientific research and assessment, and long term monitoring of the refuge resources, and the impacts or threats thereto from human and other activities, to help better understand, protect, and conserve these resources for future generations, consistent with applicable law;
- (5) To allow Native Hawaiian cultural, subsistence, and religious practices, and identification and coordination of Native Hawaiian interests, that are consistent with applicable law and the long-term conservation and protection of the resources of the marine refuge;
- (6) To coordinate management among the department, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the National Ocean Service, and other entities, as appropriate, to provide comprehensive conservation of the coral reef ecosystem and related marine resources and species throughout the area, consistent with applicable authorities and management principles, including cleanup and prevention of marine debris, restoration or remediation of degraded or injured resources, enforcement and surveillance, management of potential tourism, recreational, and commercial activities and actions needed to ensure they do not degrade the resources or diminish the natural character of the marine refuge; and
- (7) To be consistent with federal law where federal law is applicable. [Eff _____]
(Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-8, 188-37, 188-53)

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"Marine life" means any type of species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweeds or other marine plants, including any part, product, seed, or root thereof.

"Non-extractive" means any action that does not involve the taking of marine life.

"Pole-and-line fishing" means attempting to engage or engaging in the act of taking marine life with the aid of a fishing gear consisting of a length of rigid, flexible, shaft (the pole) to which is attached a length of flexible fishing line (the line), including a reel to hold the line and other associated devices, such as hooks, leads, and swivels.

"Registration" means to assign a number to a vessel pursuant to chapter 13-241.

"Scientific purposes" means observing, identifying, describing, investigating, and theoretically explaining natural phenomena, including the principles and processes necessary to form concepts, to conduct observations or experiments, and to validate hypotheses by observation or experiment.

"State marine waters" means the area extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary.

"Take" means to fish for, catch, capture, confine, collect, or harvest or attempt to fish for, catch, capture, confine, collect, or harvest aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, collect, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, confined, collected, or harvested, shall be construed as taking.

"Trolling" means attempting to engage or engaging in the act of pole-and-line or hand-line fishing while in a moving boat, which results in the line dragging behind the boat. [Eff] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-5, 188-37, 188-53)

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§13-60.5-4 Prohibited activities. Unless otherwise authorized by law, it is unlawful for any person:

- (1) To enter the refuge without a permit issued pursuant to Section 13-60.5-6;
- (2) To take for the purpose of sale or sell marine life from the refuge without a commercial marine license; and to take marine life in violation of section 13-60.5-5;
- (3) To set foot on shore, on any emergent land or reef;
- (4) To engage in any activity, including the anchoring of a vessel that can or does result in damaging or destroying coral;
- (5) To discharge from a vessel as defined in federal and state law; and
- (6) To engage in any activity that is not authorized by this chapter. [Eff _____]
(Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-5, 188-37, 188-53)

§13-60.5-5 Permitted activities. (a) A person may, with a valid permit issued from the department, enter the refuge, subject to the restrictions of subsection (d), and take marine life using the following methods and gear while in the refuge:

- (1) Trolling for pelagic species;
- (2) Hand-line fishing; and
- (3) Pole-and-line fishing.

(b) A person may only enter the refuge to engage in activities that do not degrade the coral reef ecosystem, related marine resources and species as specifically authorized by law such as, but not limited to, those for the following purposes:

- (1) Scientific or educational purposes;
- (2) Non-extractive purposes; and
- (3) Non-commercial subsistence, cultural, and religious use by Native Hawaiians consistent with the long-term preservation of the refuge resources in accordance with permits conditions specified in section 13-60.5-6.

(c) Even with a valid permit, the department may prohibit entry into any location or locations within the refuge as it may deem appropriate to conserve or manage resources.

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(d) No entry is allowed for extractive activities, except as may be permitted in subsection (b) in the following areas:

- (1) State marine waters surrounding French Frigate Shoals, Pearl and Hermes Atoll, and Kure Atoll as defined in section 13-60.5-2 and shown on exhibits "C", "H", and "I", respectively, located at the end of this chapter, and made a part of this chapter;
- (2) State marine waters from 0 to 20 fathoms around Necker Island, Gardner Pinnacles, Maro Reef, Laysan Island, and Lisianski Island in the marine refuge as defined in section 13-60.5-2 and shown on exhibits "B", "F", "E", "D", and "G", respectively at the end of this chapter, and made a part of this section; and
- (3) State marine waters from 0 to 10 fathoms surrounding Nihoa Island, shown on exhibit "A", and located at the end of this chapter, and made a part of this section. [Eff
] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-5, 187A-6, 188-37, 188-53)

§13-60.5-6 Permits. (a) The board or its authorized representative may issue permits to enter the refuge and conduct activities as provided in section 13-60.5-5, subject to the following conditions:

- (1) Receipt of complete information the department may require on an application provided by the department that lists the applicant's name, street and mailing addresses, number of persons entering with the applicant, vessel registration number or documentation number, name and length of the vessel, proposed dates of entry, purpose of entry, area of activities, and any other pertinent information;
- (2) A public comment period of thirty days after receipt of a complete application;
- (3) When reviewing an application, the department shall consider whether the applicant has violated or not complied with any term or

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condition of previous permits issued by the department. The department may deny an application based on a past violation or non-compliance with any term or condition of a permit issued under this chapter; and

- (4) Approval may be granted after an assessment of the appropriateness of the activity described in the application based on:
- (i) Factors that the department considers relevant to section 13-60.5-1, the intent and purpose of this chapter, and
 - (ii) All applicable state and federal laws, including written proof of compliance with the federal permit requirements governing commercial and recreational fishing in the adjacent waters.
 - (iii) Submission of an application to the department or the receipt of public comments to the department on the application shall not obligate the department to issue a permit or constitute a right on the part of an applicant to receive a permit.

(b) The department may issue a permit for a limited term, subject to this section, and an approved permit shall not be valid for longer than one year from date of issuance. The issuance of a permit shall not constitute a vested right to receive additional or future permits.

(c) Permits are non-transferable.

(d) The permit holder shall submit monthly catch or access reports on forms provided by the department for activities engaged in while in the refuge, with the information from any report remaining confidential as proprietary information.

(e) The department may require and impose such terms and additional conditions in the permit as it deems necessary to fulfill the intent and purpose of this chapter, such as a vessel monitoring system as a future requirement, once the technology and capacity is sufficiently advanced.

(f) The department may determine that the protection and conservation of resources in all or a part of the area requires cessation of some or all of the activities allowed by permit. After notification

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by any reasonable means to a permit holder of such determination, the permit will automatically expire on the date provided in the notification.

(g) There is no right to a renewal or re-issuance of a permit.

(h) The board may revoke a permit for an infraction of any term or condition of a permit.

(i) Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation. [Eff _____]
(Auth: HRS §§187A-5, 188-37, 188-53)
(Imp: HRS §§187A-5, 188-37, 188-53)

§13-60.5-7 Penalties. Any person violating a provision of this chapter, or the terms and conditions authorized by rule or statute in any permit under this chapter, shall be punished as provided in sections 187A-12.5, 187A-13, and 188-70, HRS, and as may be otherwise provided by law." [Eff _____]
(Auth: HRS §§187A-5, 187A-12.5, 187A-13, 188-70)
(Imp: HRS §§187A-12.5, 187A-13, 188-70)

2. The adoption of chapter 13-60.5, Hawaii Administrative Rules, shall take effect 10 days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

RAMSEYER DRAFT
(11/05/03)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.5
Hawaii Administrative Rules

(Date)

1. Chapter 60.5 of Title 13, Hawaii
Administrative Rules, entitled **A**northwestern Hawaiian
Islands Marine Refuge~~@~~is adopted to read as follows:
